IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 21750 of 2007(L)

AGAINST THE ORDER DATED 18/06/2007 IN EA 173/07 IN EP 7/1994 IN OS.159/1972 of SUB COURT,NEYYATTINKARA

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PETITIONER:

C. NAGAMMA, W/O.KUMARA SWAMI PILLAI,
(ADDL.16TH DEFENDANT), OOTTUKUZHI VILAKOM
PURAYIDOM, KUNNATHUKAL VILLAGE,CHERIAKOLLA DESOM,
VELLARADA PANCHAYAT.

BY ADV. SRI.R.GOPAN

RESPONDENTS:

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1. K.V. PURUSHOTHAMAN,
KEZHARA VEEDU, MELOOR VILLAGE, MELOOR DESOM,
MUKUNDAPURAM TALUK.

2. NAGAMMA ALIAS MALU PONNAMMA,
OTTUKUZHI VILAKAM PURAYIDOM, CHERIYAKOLLA DESOM,
KUNNATHUKAL VILLAGE, VELLARADA PANCHAYAT(DIED.
LEGAL HEIR HER SON 6TH DEFENDANT).

3. MALU CHINNAMMA OF -DO- -DO- (DIED),
(LEGAL HEIR ADDITIONAL 7TH DEFENDANT).

4. MALU ESSAKKY OF -DO- -DO-.

5. VELAYUDHAN PILLAI,
ESSANTHI MANGALATHU VEEDU, KEEZHURUKKU,
BHOOTHA PANDI, NAGARCOIL, KANYAKUMARI DIST.
(DIED LEGAL HEIRS OF ADDL.8,9,10,11 DEFENDANTS).

6. GANESAN PILLAI OF -DO- -DO-.

7. PANDARA PILLAI KUMARASWAMI PILLAI,
OTTUKUZHI VILAKOM PURAYIDOM OF -DO- -DO-.

8. CHINNAMMA KOLAMMA (ADDL.7TH DEFENDANT),
OOTTUKUZHI VADAKKEPUTHEN VEEDU OF -DO- -DO-.

9. MEENAKSHI CHELLAMMA (ADDL.8TH DEFENDANT)

KEEZHUTTU SANTHI MANGALATHU VEEDU OF -DO- -DO-.

10. VELAYUDHAN PILLAI SHIVATHANU PILLAI,
(ADDL. 19TH DEFENDANT) OF -DO- -DO-.

11. VELAYUDHAN PILLAI SWARNAMUTHU PILLAI,
(ADDL.10TH DEFENDANT) OF -DO- -DO- (MINOR).

12. VELAYUDHAN PILLAI MUTHUKRISHNA PILLAI
(ADDL. 11TH DEFENDANT) OF -DO- -DO- (MINOR).

13. CHELLAMMA MUTHAMMA (MINOR),
(ADDL.12TH DEFENDANT) OF -DO- -DO- (8TH DEFENDANT MEENAKSHI CHELLAMMA HAD OPPOINTED AS GUARDIAN OF MINOR DEFENDANTS 10,11,12 IN THE APPEAL COURT,SHE IS THE MOTHER OF MINOR DEFENDANTS).

14. CHELLAMMA PILLAI NADARAJA PILLAI
(ADDL.13TH DEFENDANT), OOTTUKUZHI ROADARIKATHU PUTHEN VEEDU, KUNNATHUKAL VILLAGE,CHERUKOLLA DESOM

15. KOLAMMA CHANDRIKA (ADDL.14TH DEFENDANT)
OF -DO- DO-.

16. KOLAMMA THANKOM (ADDL.15TH DEFENDANT)
OF -DO-DO-. (ADDL.DEFENDANT 13 TO 15 ARE IMPLEADED AS PER ORDER ON E.A.NO.93/04 DATED 12-04-2006).

17. RAJA RAJESWARI (ADDL.17TH DEFENDANT)
D/O. NAGAMMA OF -DO- -DO-, OOTTUKUZHI VILAKOM PURAYIDOM, KUNNATHUKAL VILLAGE, CERIAKOLLA DESOM, VELLARADA PANCHAYAT.

18. BHUVANESWARI (ADDL. 18TH DEFENDANT),
D/O. NAGAMMA OF -DO- -DO-.

19. AMBIKA (ADDL.19TH DEFENDANT),
D/O. NAGAMMA OF -DO- -DO-.

20. CHANDRIKA (ADDL.20TH DEFENDANT),
D/O. NAGAMMA OF -DO- DO-.

21. SREEMURUKAN (ADDL.21ST DEFENDANT),
S/O. KUMARA SWAMI PILLAI OF -DO- -DO-.

22. GOPAKUMARAN (ADDL. 18TH DEFENDANT),
S/O. KUMARAN SWAMI PILLAI OF -DO- -DO-.
(LEGAL HEIRS OF DECEASED 6TH DEFENDANT IS IMPLEADED AS PER ORDER IN EA.NO.392/2006 DTD.23-01-2007).

BY SR. ADV SHRI. N.N.SUGUNAPALAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 21750 OF 2007 L

Dated this the 16th July, 2007.

JUDGMENT

This writ petition is filed to set aside the order passed by the Subordinate Judge, Neyyattinkara whereby the decree holder has been directed to take steps for getting assistance of the Superintendent, District Survey Office, Thiruvananthapuram. What is sought to be executed is the decree of the court and the court has given a decree after a prolonged trial to give the property described as COLK to the decree holder. When an execution is being taken out now it is attempted to be projected that such a property cannot be identified at all. I am conscious of the fact that the property which is decreed alone can be delivered to the party and nothing else. Now, when the Village Officer goes to the plot and submits that it is not identifiable a higher authority viz., the District Superintendent of Survey who is well qualified will be certainly able to look into the matter and find out whether the property can be delivered by fixing the property strictly in accordance with the decree passed by the court. There is nothing to be set aside so far as this case is concerned because the Village Officer and the Taluk Surveyor only expressed their inability to fix the stones.

Anyhow, they cannot have a better say than a decree of the civil court. Therefore, the decree of the civil court is to be respected and implemented and for that purpose if the assistance of the District Superintendent of Survey is necessary that has to be allowed and that is what has been precisely done by the executing court. The property may be visited and located. I feel in this case if the commissioner who bas fixed the property as COLK is available, he may be directed to visit the property with the assistance of District Superintendent of Survey, demarcate it and thereafter, after hearing both sides including the objection that has been raised by the present writ petitioner the matter be disposed of in accordance with law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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